A

NATIONAL LAND FINANCE CO-OPERATIVE SOCIETY LTD

v.

B

S MONAGURAN SUBRAMANIAM & PENGHUNI-PENGHUNI LAIN

HIGH COURT MALAYA, ALOR STAR
MOHD SOFIAN ABD RAZAK J
[CIVIL SUIT NO: 22-50-2002]
C 28 JANUARY 2009

LAND LAW: *Illegal occupants - Eviction - Application for vacant possession of land - Occupation of land by defendants for 53 years - No evidence of rent or any payment between land owner and occupants -* D *Whether defendants only gratuitous licensees - Whether right to remain on land ceased upon expiry of notice to quit - Whether defendants considered trespassers unlawfully occupying land without consent - Whether plaintiff entitled to apply for eviction*

E ***TRUSTS:*** *Trusts - Creation of - Validity - Whether trust only valid if title to property vested in trustee completely - Whether validly declared or should be rendered invalid - No existence of sale and purchase agreement or lease or tenancy on registered document of title or caveat to protect defendants' interest - Whether unfair to plaintiff to be denied ownership* F *right - Whether plaintiff had right to evict*

The plaintiff, a co-operative society established under the Cooperative Societies Act 1993 was at all material times the co-registered owner of a piece of land ('the said land'). The defendants and the other occupants have been in occupation on G the said land for 53 years since 1953. The plaintiff alleged that the defendants and the other occupants were in illegal occupation of part of the said land in their dwelling (Kampung Sungai Tukang). The plaintiff further alleged that the defendants and the other occupants were trespassers and were occupying the said H land without its consent. The plaintiff demanded vacant possession of the said land and served a notice giving 60 days to the defendants and the other occupants to quit and deliver vacant possession of the portion of the said land and the premises occupied by them. The defendants and the other occupants I continued to remain in occupation of the said land without any payment of rental alleging that they were the lawful occupants in

law on the said land. According to the defendants, in the 1960s when the said land was fragmented and sold off to an English company, part of the said land was purchased by the plaintiff for the defendants and the other occupants. The purpose was to ensure that the defendants and the other occupants would not lose their place of residence and that the late Tun V.T Sambanthan would hold the said land on trust for the defendants and the other occupants. It was argued that the representation by the late Tun V.T Sambanthan being the founder and chairman of the plaintiff was binding on the plaintiff. The defendants further submitted that they had permission and consent from the predecessors in title of Ladang Sungai Tukang to occupy the said land since 1953 and that they had the lawful right to remain on the said land. The issues that arose were (1) whether the defendants and the other occupants remained on the said land with the consent and permission of the plaintiff; (2) whether there existed a trust created for the benefit of the defendants and the other occupants as the beneficial owner and (3) whether the defendants and the other occupants were irrevocable licensees coupled with equity.

Held (allowing the plaintiff's claim; dismissing defendant's counterclaim):

(1) There was not an iota of evidence that arrangement of any kind was ever made between the plaintiff as the land owner and the defendants and the occupants of the said land as occupiers. There was no rent or any payment whatsoever charged upon the defendant and the other occupants. Similarly, there was also no offer made to pay rental or any payment by the defendants and the other occupants to the plaintiff. It could be construed that over the 53 years the defendants and the occupants were allowed to remain on the said land, they were only as gratuitous licensees and their right to remain on the said land ceased upon the expiry of the notice to quit. The defendants and the other occupants became trespassers on the said land and the plaintiff was entitled to apply for their eviction. (paras 51, 53, 55, 56 & 63)

(2) In order to establish a creation of trust by the plaintiff for the benefit of the defendants and the other occupants, there must be some evidence adduced by the defendants and the other occupants. The defendants and other occupants must establish the creation of a trust with certainty. The promise by the late Tun V.T Sambanthan to the defendants and the other occupants was made in 1965 when the said land was not even registered in the plaintiff's name. A trust is only valid if the title to the property is vested in the trustee completely and if the trust had been validly declared. Here, the so called creation of a trust was invalid because title to the said land had not yet been vested in the late Tun V.T Sambanthan's name nor was it vested in the plaintiff's name. If at all there was a trust, it had not been validly declared. (paras 64, 65 & 66)

(3) The representation purportedly made by the late Tun VT Sambanthan could not confer any interest in the said land capable of registration under the National Land Code. There was no sale and purchase agreement either in writing or orally. There was no lease or tenancy on the registered document of title. There was no caveat by the defendants so as to protect the defendants' alleged interest. The defendants and the other occupants had occupied the said land for some 53 years without any payment or promise to pay any rental or any other terms of payment whatsoever to the plaintiff. The facts of the instant case did not show that there was ever a tenancy created between the plaintiff and the defendants and the other occupants. If there was a tenancy created then in law under s. 221(3) of the National Land Code the tenancy could not be longer than 30 years. It would be unfair to the plaintiff to be denied their ownership right and accordingly under the circumstances the court ruled that the plaintiff had the right to evict the defendants and the other occupants from the said land. (paras 71, 72, 73 & 75)

Case(s) referred to:

C Paul D'cruz v. Chow Tai Yow & Sons Sdn Bhd [1998] 4 CLJ Supp 389 HC ***(refd)***

Cahaya Ideal (M) Sdn Bhd v. Orang Orang Yang Mengenali Diri Sebagai 'Ponga' & Ors [1999] 3 CLJ 257 HC ***(refd)***

Immetec Sdn Bhd v. Yong Tai Hoong [1995] 1 MLJ 390 ***(refd)***

Inwards & Others v. Baker [1965] 1 All ER 26 ***(dist)***

Koperasi Wanita Sarawak Bhd & Anor v. Robert Sim Teck Hock [2005] 3 CLJ 188 FC ***(refd)***

Lebbey Sdn Bhd v. Chong Wooi Leong & Anor [1998] 1 CLJ 1072 HC ***(refd)***
Sentul Murni Sdn Bhd v. Ahmad Amirudin Kamarudin & Ors [2000] 4 CLJ 375 CA ***(refd)***
Shaheen Abu Bakar v. Perbadanan Kemajuan Negeri Selangor [1999] 1 CLJ 74 FC ***(refd)***
Tekad Urus Sdn Bhd v. Penduduk-Penduduk Yang Menduduki Kawasan Yang Dipanggil Desa Perwira [2004] 2 CLJ 516 CA ***(refd)***
Toh Kheng Heng & Anor v. Ahmad Fauzi Mohd Taufek [1994] 1 CLJ 547 HC ***(refd)***
Yap Pun & Anor v. Orang-Orang Yang Tidak Diketahui Yang Menduduki Diatas Tanah Yang Dikenali sebagai Lot No: 108, Section 92A, Bandar Kuala Lumpur [1997] 1 LNS 199 ***(refd)***

Legislation referred to:
Evidence Act 1950, s. 115
National Land Code, s. 221(3)
Rules of the High Court 1980, O. 89 r. 1

Other source(s) referred to:
Maudsley & Burn's Trust and Trustees, p 59

For the plaintiff - M/s Kalai & Partners
For the defendant - M/s Pathi & Assoc

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Sofian Abd Razak J:

[1] It was agreed on 4 January 2004 that since the issues and the factual circumstances in all the ten (10) suits were the same, this court's decision pertaining to only one of the suit ie, the present suit would be binding on the rest, namely GS 22-48-2002, GS 22-49-2002, GS 22-51-2002, GS 22-52-2002, GS 22-53-2002, GS 22-54-2002, GS 22-55-2002, GS 22-56-2002, GS 22-57-2002 and GS 22-58-2002.

[2] Documents to be marked as follows namely:

a) Bundle of pleadings – Bundle A
b) Bundle of agreed documents – Bundle B
c) Bundle of additional agreed documents – Bundle C

A

d) Bundle of 2nd plaintiff's document	–	Bundle D
e) Issues to be Tried	–	Bundle E
f) Agreed statements of facts	–	Bundle F

B

Plaintiff's Witnesses

Vadiveloo a/l Veerappan	–	SP1
Muniandy a/l Ramalingam	–	SP2

C

Defendants Witnesses

S. Monaguran a/l Subramaniam	–	DW1
Lechumee a/p Perumal	–	DW2

D

Witness Statements

SP1	–	P10
DW1	–	D12
DW2	–	D13

E

The Factual Background

[3] The plaintiff is a co-operative society established under the Co-operative Societies Act 1993 and was at all material times the co-registered owner of a piece of land held in H.S.(0)5155/95 PT. 33882 Mukim Sungai Petani, Daerah Kuala Muda, Kedah Darul Aman (hereinafter called 'the said land').

F

[4] Approximately about 13.051 acres of the said land is registered in the plaintiff's name and the remaining portion of the said land is beneficially owned by one Ang Toon Cheng.

G

[5] By project management agreement dated 25 January 1999, the plaintiff appointed Westingmont Holding S/B as its project manager to develop the said land into a housing project. It was only after the agreement was concluded that the question of evicting the defendants and the other occupants from the said land arose.

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[6] The defendants and the other occupants have been in occupation on the said land for 53 years since 1953. The plaintiff alleged that the defendants and the other occupants were in illegal occupation of part of the said land in their dwelling bearing the postal address at 131 A, Kampung Sungai Tukang, 08000 Sungai Petani, Kedah.

[7] The plaintiff further alleged that the defendants and the other occupants were trespassers and were occupying the said land without its consent. The plaintiff demanded vacant possession of the said land and served a notice dated 21 August 2001 giving 60 days to the defendants and the other occupants to quit and deliver vacant possession of the portion of the said land and the premises occupied by them.

[8] The defendants and the other occupants continue to remain in occupation on the said land without any payment of rental alleging that they were the lawful occupants in law on the said land. Secondly, there existed a trust in respect of the said land whereby the defendants and the other occupants became the beneficiaries. Thirdly, the defendants and the other occupants have an irrevocable license coupled with equity to occupy the said land.

The Plaintiff's Claim

[9] The plaintiff was and is at all material time the registered owner of the said land and the defendants and the other occupants were and are unlawfully in occupation of the said land. The plaintiff pray that the defendants and the other occupants do deliver vacant possession of the said land to the plaintiff.

The Defendants' Defence

[10] That the defendants and the other occupants were in lawful occupation of the said land and also there existed a trust for the defendants and the other occupants. They also claim that they have in equity an irrevocable license coupled with equity to remain on the said land.

[11] The Issues To Be Tried Are As Follows Namely:

(i) Whether the defendants and the other occupants are lawfully occupying the said land bearing the postal address at 131 A, Kampung Sungai Tukang, 08000 Sungai Petani, Kedah.

A (ii) Whether there existed a trust for the defendants and the other occupants of which they were the beneficial owner.

(iii) Whether the defendants and the other occupants have any legal interest in the said land.

B (iv) Whether the defendants and the other occupants were irrevocable licensees coupled with equity.

(v) Whether the plaintiff is estopped in equity from evicting the defendants and the other occupants.

C (vi) Who is the beneficial owner of the said land.

[12] Although there are six issues to be tried by the court in essence there are only three main issues which need to be considered by the court namely:

D (i) Whether the defendants and the other occupants were occupying the said land lawfully. That is to say they remained on the said land with the consent and permission of the plaintiff.

E (ii) Whether there existed a trust created for the benefit of the defendants and the other occupants as the beneficial owner.

(iii) Whether the defendants and the other occupants were irrevocable licensees coupled with equity.

F **[13]** The court shall now examine the issues above in succession.

The First Issue

G *(i) Whether The Defendants And The Other Occupants Were Lawfully Occupying The Said Land Bearing The Postal Address At 131 A, Kampung Sungai Tukang, 08000 Sungai Petani, Kedah*

[14] In examination-in-chief, DW1, S. Monaguran a/l Subramaniam informed the court that he and his family had come and stayed at H Kampung Sungai Tukang since 1953. Prior to that, Kampung Sungai Tukang was known as Ladang Sungai Tukang which was a rubber estate and that his parents had worked there as rubber tappers. In the 1960s when the said land was fragmented and sold off to an English company, part of the said land was I purchased by the plaintiff for the defendants and the other

occupants. The purpose was to ensure that the defendants and the other occupants would not lose their place of residence and that the late Tun V.T. Sambanthan would hold the said land on trust for the defendants and the other occupants.

[15] During cross-examination of DW1, he stated that after his father passed away, his mother (DW2) continued to work with the owner of Ladang Sungai Tukang.

[16] DW1 further said that the defendants and the other occupants of the said land had permission and/or consent to stay on the said land since 1953.

[17] DW1 also confirmed the existence of public utilities on the said land such as electricity, water and telephone being connected upon the application by the defendants.

[18] It was also averred by the defendants that the plaintiff had knowledge that the defendants were in occupation of the said land and the plaintiff had contributed financially towards the renovation of the temple and had donated computer sets to the Tamil school at the said land.

[19] Later in cross-examination, DW1 stated that the defendants and the other occupants had permission and consent from the predecessors in title of Ladang Sungai Tukang to occupy the said land since 1953. DW2 also confirmed that she had been staying on the said land since 1953 and the plaintiff knew of the said occupation.

[20] The defendants denied that they were in occupation of the said land unlawfully and tendered proof of lawful right to remain on the said land *inter alia* namely:

(a) that the defendants uninterrupted occupation of the said land since 1953;

(b) that public utilities being made available upon the said land;

(c) that the plaintiff's knowledge of the occupation of the said land by the defendants;

(d) that the financial assistance for the renovation of the temple and purchase of computer sets for the Tamil School fund upon the land;

A (e) that the plaintiff on their own accord either express by or implied by giving permission to the defendants and the other occupants to reside upon the said land.

[21] In support of the defendants' argument that they were not B squatters and staying on the said land unlawfully, the learned counsel for the defendants made reference to two cases namely:

[22] *Tekad Urus Sdn Bhd v. Penduduk-penduduk Yang Menduduki Kawasan Yang Dipanggil Desa Perwira* [2004] 2 CLJ 516, the court held *inter alia*: C

> The issue before the High Court was whether the respondents' continued occupation of the subject land made them 'squatters simpliciters' because no consent or licenses was obtained by them from the registered owner whether past or present.
>
> D The Court further held: Even if the respondents' initial entry on the subject land was unlawful as alleged by the appellants, acquiescence made such entry lawful. The respondents had been in occupation of the subject land since 1988. This fact was well within the Government, whose departments and agencies had E provided public amenities to them. With the availability of such evidence, an issue arose as to whether the conduct of the government agencies could be interpreted as consent of the State Authority.

[23] In *Shaheen Abu Bakar v. Perbadanan Kemajuan Negeri Selangor* F [1999] 1 CLJ 74 where the Federal Court held *inter alia* that:

> ... from the evidence, the State Government know of their presence on the said land. No proceeding was taken to evict them under Order 89. From January 1988, the Menteri Besar knew about the settlers. He approved the renovation of their surau. He G knew that the settlers were provided with water supply, roads and community hall. As stated earlier, when the land was given to PKNS, it knew about the settlers. In my opinion, there is an arguable case that the settlers occupied the said land with the acquiescence of the State Authority.
>
> H ... to conclude our judgment, we find that the settlers in Kampung Sungai Rumput were not squatters simpliciter. There is a strong arguable case that they occupied the said land with the acquiescence of the State Authority.

I

[24] In reply to the above averment by the defendants, the learned counsel for the plaintiff submitted that there is not even a single strand of evidence given by the defendants in their claim that the plaintiff gave financial assistance to renovate the temple. As regard the donation of RM500 made to the Tamil School of Ladang Sungai Tukang, it was made in the personal capacity of Dato' B. Sabadevan of which this fact was not denied by DW1. The learned counsel for the plaintiff further stated that even if such donation or financial assistance was made by the plaintiff, it was for public purpose and not for the defendants' respective premises to make it an active encouragement.

[25] On the two cases referred to by the learned counsel for defendants, the learned counsel for the plaintiff stated that the two cases referred to were cases relating to an application by summary procedure to evict squatters under O. 89 RHC 1980. The rule only applies in circumstances limited by O. 89 r. 1 RHC 1980 which is a claim for possession of land, occupied by a person or persons who entered into and remained in occupation without license or consent.

[26] In the instant case, a writ has been filed and among the prayers sought is vacant possession of the said land. The legal consideration in the instant case is totally different from the law applicable to O. 89 proceedings.

The Second Issue

(ii) Whether There Existed A Trust Created For The Benefit Of The Defendants And The Other Occupants As The Beneficial Owner

[27] By virtue of the said purchase, the plaintiff became the registered owner of the said land. This fact was also not in dispute. What was in dispute according to the learned counsel for the plaintiff is the DW1 answer in reference to exh. D12 that the late Tun V.T. Sambanthan while visiting Ladang Sungai Tukang in the year 1965 had promised the residents of Ladang Sungai Tukang that the said land will be held in trust and be given to the defendants and the other occupants of Ladang Sungai Tukang.

[28] In the evidence by DW1 and DW2 respectively, they had alleged that the late Tun V.T. Sambanthan had promised that the said land would be held in trust and would be given to the defendants and the other occupants of Ladang Sungai Tukang.

[29] The learned counsel for the defendants referred to an article entitled 'A Dream Come True for Estate Workers' which stated as follows:

> The NLFCS remains the longest plantation based cooperative society owned, managed and operated mainly by Malaysian Indians. Its uniqueness is that it was formed at a crucial time to become the saviour of the estate workers in 1960s who otherwise, would have remained merely as workers without shares in the estates they had toiled for all their lives. The NLFC brought about a new awareness and determination to the plantation workers by purchasing the estates in which they could not only work but could have a share.

[30] According to the learned counsel for the defendants that in reliance on the said article, it was a representation that the plaintiff would purchase the said land in the interest of the defendants and the action by the plaintiff to evict the defendants runs contrary to the concept of saviour. It was further argued that the representation by the late Tun. V.T. Sambanthan being the founder and Chairman of the plaintiff binds the plaintiff. The learned counsel for the defendants also referred to a report on the achievement and development of the plaintiff for the period of ten years between 1960 to 1970 which is found in exh. D11 where the words used were as follows:

> Masyarakat saya harus diselamatkan atau dijaga

[31] Learned counsel for the defendants further submitted that the fact that the purchase of the said land was not included in the plaintiff's annual report lend support to the fact that the said land was held in trust by the plaintiff for and on behalf of the defendants and the other occupants.

[32] In reply to the above stated averments by the defendants, the learned counsel for the plaintiff submitted that it was inherently incredible for the late Tun. V.T. Sambanthan to have promised the residents of Sungai Tukang Estate to hold the said land in trust and to be given to the residents in 1965, as the said land was only purchased by the plaintiff on 1 March 1967 and registered under the plaintiff's name on 14 February 1998.

[33] The learned counsel for the plaintiff further submitted that even if such a promise was made in 1965, the plaintiff nor the late Tun V.T. Sambanthan had the legal capacity to do so as the plaintiff was not then the beneficial or legal owner of the said land. The plaintiff denied that the said land was purchased in trust for the defendants and will be given to them instead the said purchase was for investment. It would be wholly illogical for the plaintiff to have purchased the said land for the defendants' interest without any consideration and the defendants have not offered any evidence or particulars in respect of the alleged trust purportedly created by the plaintiff for the benefit of the defendants.

[34] During cross-examination of SP1, he explained that the reason the said land is not mentioned in the annual report was because it was combined with other pieces of land under the heading "Fixed assets – freehold land building."

[35] With regard to the issue of continuous occupation and possession of the said land, it was submitted by the learned counsel for the plaintiff that there was no evidence as to when such possession and occupation took place and upon what terms. There were no details as to any agreement between the predecessors in title to the land and the residents of Sungai Tukang in respect of such occupation. The cases referred to by the learned counsel for the plaintiff are:

(i) *Lebbey Sdn Bhd v. Chong Wooi Leong & Anor* [1998] 1 CLJ 1072, which held that any person claiming the right of occupation as against the registered owner bears the burden of proving such right on a balance of probabilities.

(ii) *Cahaya Ideal (M) Sdn Bhd v. Orang Orang Yang Mengenali Diri Sebagai 'Ponga' & Ors* [1999] 3 CLJ 257 also dealt with similar principle on burden of proof as to particular fact.

[36] The learned counsel for the plaintiff submitted that since the plaintiff is a co-operative society, any decision in respect of property owned by the plaintiff can only be made by the Board of Directors. No single member of the board is empowered to make an agreement which could bind the plaintiff.

[37] Therefore, it is submitted that the late Tun V.T. Sambanthan was not empowered to deal with the said land without the expressed approval of the Board of Directors of the plaintiff.

[38] In *Cahaya Ideal*'s case *(supra)* the defendant produced a letter written by the land owner giving consent, however, in the instant case, the defendants were not able to produce any letter where the late Tun V.T. Sambanthan in 1965 had promised to hold the said land in trust for the residents of Estate Sungai Tukang and to give the same to the residents of Estate Sungai Tukang.

[39] Following the principle as laid down in *Cahaya Ideal*'s case *(supra)* even if the late Tun V.T. Sambanthan had given his promise, it would still be void 'for want of uncertainty.'

[40] The learned counsel for the plaintiff also submitted that the offer by the defendants to purchase the said land for the sum of RM300,000 had been rejected by the plaintiff. There was no representation made to the defendants that the said land would be transferred to the defendants for the sum of RM300,000.

The Third Issue

(iii) Whether The Defendants And The Other Occupants Were Irrevocable Licensees Coupled With Equity

[41] The DW1 and DW2 during their examination-in-chief and cross-examination have confirmed that the defendants and the other occupants have been staying on the said land since 1953 for about 53 years with the knowledge and consent of the predecessors in title to the land and also the plaintiff. There were about 110 houses and 110 families residing on the said land.

[42] It was further argued by the learned counsel for the defendants that because of the representation and encouragement by the plaintiff in particular the late Tun V.T. Sambanthan that the defendants would eventually be given ownership to the said land, that they had expended time and money in renovating their houses. The provision of public utilities connected to their houses also encouraged the defendants to expend money and energy towards renovating their houses.

[43] In this context the learned counsel for the defendants referred to s. 115 of the Evidence Act 1950 which states as follows: A

> When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing. B

[44] The learned counsel for the defendants also referred to the case of *Inwards & Others v. Baker* [1965] 1 All ER 26 where the court held that: C

> Since the defendant had been induced by his father to build the bungalow on his father's land, and had expended money for that purpose in the expectation of being allowed to remain there, equity would not allow the expectation so created to be defeated and accordingly the defendant was entitled to remain in occupation of the bungalow as against the trustee. D

[45] The learned counsel for the defendants also referred to the case of *C Paul D'cruz v. Chow Tai Yow & Sons Sdn Bhd* [1998] 4 CLJ Supp 389 where the court held: E

> The rule of law applicable to the case appears to me to be this: If a man under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest, takes possession of such land with the consent of the landlord or upon the faith of such promises or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation. F G

[46] In conclusion, the learned counsel for the defendants submitted that under the circumstances of the case the defendants are licensees coupled with equity and the plaintiff are estopped from evicting them from the said land. H

[47] In reply the learned counsel for the plaintiff submitted that the purported representation and encouragement does not exist and even if it does, it is not binding upon the plaintiff. The fact that the residents of Sungai Tukang Estate having expended money in renovating buildings and houses does not create an equity in favour of the defendants. I

[48] The learned counsel for the plaintiff further submitted that the facts in *Inwards & Others v. Baker (supra)* can be distinguished from the facts of the instant case and therefore not applicable.

Findings Of The Court

[49] On the first issue. The presence of the defendants and the other occupants on the said land formerly known as Sungai Tukang Estate. When the estate was fragmented, the plaintiff purchased about 13.051 acres from one Ratnavale by way of Sale & Purchase Agreement dated 1 March 1967. It was not really an estate as such but the 13.051 acres were land on which the houses belonging to the defendants and the other occupants were built. The defendants and the other occupants were ex-workers who were residing at the estate workers quarters found upon the plaintiff's land remained since then.

[50] Some of them were the original occupants of the plaintiff's estate quarters and some of them had gone into occupation of the plaintiff's quarters with their new arrangement with those who were in occupation.

[51] The court could not find an iota of evidence that arrangement of any kind was ever made between the plaintiff as the land owner and the defendants and the occupants of the said land as occupiers. There was no rent or any payment whatsoever charged upon the defendants and the other occupants. Similarly there was also no offer made to pay rental or any payment by the defendants and the other occupants to the plaintiff.

[52] The court also noted the submission by the learned counsel for the defendants and the other occupants that ever since the purchase of the said land in 1967, and ownership registered on 14 February 1998, no action was taken to evict the defendants. This inaction by the plaintiff to take legal action against the defendants and the other occupants of the said land could be construed as giving license or permission to the defendants and the other occupants to remain on the said land.

[53] Nevertheless, if it could be construed that over the 53 years the defendants and the other occupants were allowed to remain on the said land, they were only as gratuitous licensees. Under the law, the license granted could be terminated by giving reasonable notice unless there was consideration given by the licensees to the licensor (see *Inwards & Others v. Baker (supra)*).

[54] In the instant case, defendants and the other occupants are not disputing that notices were sent to them by the plaintiff's solicitors *vide* letter dated 21 August 2000 (exh. P4(a)-(c)), the plaintiff gave the defendants and the other occupants 60 days notice to vacate possession of the said land to the plaintiff. However, the defendants and the other occupants have refused, neglected and or failed to comply with plaintiff's demand.

[55] After the receipt and expiry of the time given to the defendants and the other occupants to quit and give vacant possession of the said land, the defendants and the other occupants remained on the said land as mere squatters or trespassers.

[56] The court agrees with the submission of the learned counsel for the plaintiff that the defendants and the other occupants cannot claim adverse possession by having remained and occupying the said land for 53 years.

[57] In *Immetec Sdn Bhd v. Yong Tai Hoong* [1995] 1 MLJ 390 (Tab 1 PBA), where the brief facts are:

> the Plaintiff was the registered owner of a land upon which it was constructing a block of flats. The Defendant's have squatters residing in wooden houses on the Plaintiff's land. The Plaintiff's negotiated a settlement with Defendants and eventually when negotiation failed, the Plaintiff served notices to quit on the Defendants. The Defendants refused. The Plaintiff took out an application under Order 89 Rules of High Court 1980 to obtain vacant possession.
>
> The Defendants argued, among others that the Defendants and their families have been staying and occupying the premises for the last 40 years with the permission and or consent or fuel knowledge of the previous owner. The court held:
>
> > The fact that the defendant had been staying and occupying the premises for the last 40 years did not affect the title of the plaintiff as the registered owner because the defendants cannot claim adverse possession.
> >
> > Section 341 of the NLC provides as follows:
> >
> > Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any

A person or body entitled to an interest therein, and accordingly, the Limitation Ordinance, 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.

B **[58]** The court also agreed with the submission of the learned counsel for the plaintiff that if the late Tun V.T. Sambanthan had purportedly represented that the said land was purchased for the benefit of the residents of Sungai Tukang Estate in 1965 and the said land would be given to the residents of Sungai Tukang Estate, then the plaintiff will state that any decision in respect of C the property owned by the plaintiff can only be made by the Board of Directors. What is interesting here is that the said representation and promise was made in 1965 but the sale and purchase agreement was signed in 1967 and the said land was registered in the plaintiff's name on 14 February 1998, therefore D not binding on the plaintiff. If the defendants and the other occupants chose to act upon the purported representation of the late Tun V.T. Sambanthan and made improvement on the houses and expended money and time, they did so at their own peril.

E **[59]** This means that the defendants and the occupants must have been in occupation of the said land during the plaintiff's predecessors' tenure in title. If that is so, then the defendants and the other occupants must prove consent or continue to occupy. There must be some positive encouragement on the part of the F plaintiff or the predecessors in title. These the defendants and the other occupants have failed to do so.

[60] Even if the defendants and the other occupants were allowed to occupy the said land by the plaintiff's predecessors in G title and subsequently by the plaintiff themselves, the defendants and the other occupants were only gratuitous licensees and the consent of the plaintiff and the predecessors in title or that of the plaintiff to their occupation of the said land did not have the effect of conferring upon them any right in equity (see *Toh Kheng Heng & Anor v. Ahmad Fauzi Mohd Taufek* [1994] 1 CLJ 547). H

[61] The court also referred to the case cited by the plaintiff's counsel *Yap Pun & Anor v. Orang-Orang Yang Tidak Dikecuali Yang Menduduki Diatas Tanah Yang Dikenali sebagai Lot No: 108, Section 92A, Bandar Kuala Lumpur* [1997] 1 LNS 199, where the issue I involved is almost similar to the facts of the instant case. Here the plaintiff claimed for vacant possession of a piece of land. The defendants resisted the claim and alleged *inter alia* as follows:

(a) They occupied the land since 1940's with the consent of the Selangor State Government. A

(b) That the Governments agencies like Lembaga Letrik Negara, Water Authority and DBKL supplied them electricity and water and charge them with assessment respectively. The court rejected the argument that by such an action the State Authority must have impolitely consented and acquiesced their occupation. The court further held: B

> Assuming that they held occupied the said land before the alienation, to my mind, under the NLC 1965 the authority to authorize the occupation of State land is only the committee or the Selangor State Authority at the relevant time. Therefore, such action of the said agencies cannot bind the committee or the Selangor State Authority with regard to the occupation of the state land. In *Kabra Holdings Sdn. Bhd. v. Ahmad bin Shahlan & Ors* [1992] 2 CLJ 817; [1992] 2 CLJ (Rep) 609, it was held that the promise or representation of the Menteri Besar of Selangor in allowing the defendants to occupy the disputed land did not bind the State Authority. In *Sidek bin Haji Muhamad & Ors v. The Government of the State of Perak & Ors* [1982] 1 MLJ 123, it was held that the acts of the State Director of Lands and Mines and the Collector of Land Revenue, respectively in giving permission to the settlers to occupy the state land did not bind the State Authority. C D E

[62] The facts in the instant case could be readily distinguished from the facts of *Inwards & Others v. Baker (supra)* in that the court have not been convinced that from the evidence thus far presented evinced any representation or active encouragement by the plaintiff to the defendants and other occupants to continue staying on the said land and at the same time encouraged them to expend time and money to do renovation on their houses in expectation of being allowed to remain there. F G

[63] On this first issue, it is the court's specific finding that:

(a) The defendants and the other occupants had been in occupation of the said land without any payment. H

(b) DW1 agreed that the predecessors in title did not give any permission or consent to the defendants and the other occupants to reside upon the said land forever.

I

(c) DW1 also agreed that there were no documentary evidence showing that the predecessors in title had given the defendants and his late father the consent to occupy the land forever.

(d) The plaintiff being a cooperative society stated that there was no resolution passed giving permission to the defendants and the other occupants to stay upon the said land or for the creation of trust as alleged.

(e) There was no evidence that the plaintiff as the registered owner on 14 February 1998 had invited the defendants and the other occupants to occupy the said land and houses.

(f) The time and money expended by the defendants and the other occupants on their respective houses were at their own will and expenses. No consent on approval was obtained from the plaintiff by the defendants and the other occupants prior to renovating their houses.

(g) The defendants and other occupants were only gratuitous licensees and their right to remain on the said land ceases upon the expiry of the notice to quit. The defendants and the other occupants become trespassers on the said land and the plaintiff was entitled to apply for their eviction.

[64] On the second issue, the court is of the considered view that in order to establish a creation of a trust by the plaintiff for the benefit of the defendants and the other occupants, there must be some evidence adduced by the defendants and the other occupants. From the evidence thus far, the defendants and the other occupants have failed to offer any evidence at all in this respect. The arguments put forward by the defendants and the other occupants that the late Tun V.T. Sambanthan had represented to them that the plaintiff would first purchase the said land and hold the said land on trust and later would transfer ownership of the said land to the defendants and the other occupants amounted to the creation of a trust. Accordingly, the learned counsel for defendants argued the plaintiff in holding the said land, held that the same as trustee and the defendants and the other occupants as the beneficiaries. The defendants and other occupants must establish the creation of a trust with certainty. The promise by the late Tun V.T. Sambanthan to the defendants and the other occupants was made in 1965 when the said land was not even registered in the plaintiff's name.

[65] In law a trust is only valid if the title to the property is vested in the trustee completely and if the trust had been validly declared (see *Koperasi Wanita Sarawak Bhd & Anor v. Robert Sim Teck Hock* [2005] 3 CLJ 188 FC).

[66] In the instant case, assuming there was a promise to purchase the said land by the late Tun V.T. Sambanthan in 1965 for the benefit of the defendants and the other occupants, the court held that the so-called creation of a trust was invalid because title to the said land had not yet been vested in the late Tun V.T. Sambanthan's name nor was it vested in the plaintiff's name. Following from that, the court ruled that if at all there was a trust, it had not been validly declared.

[67] In *Maudsley & Burn's Trust and Trustees* at p. 59 which states as follows:

> There can be no trust unless there is certainty in respect of the intention to create a trust, and in respect of the property which is the subject matter of the trust, and (charitable trusts apart) in respect of the beneficiaries. There are "three certainties." The principles to be applied in solving problems which arise in this context can been extracted from the cases; but each question can only be answered by careful construction of the language of the instrument under consideration.
>
> The three aspects of the "certainty" problem are here treated separately. In many cases, however, they overlap. Thus, "uncertainty" in the subject of the gift has a reflect action upon the previous words, and throws doubt upon the intention of the testator, and seems to show that he could not possibly have intended his words of confidence, hope, or whatever they may be – his appeal to the conscience of the first taker – to be imperative words. Similarly, a division of property among various claimants may create uncertainty as to both the property and the claimants.

[68] Therefore, there must be some credible evidence or particulars as to how:

i) The plaintiff express their intention to create a trust and the particulars thereof.

ii) The property which is the subject matter of the trust. Particulars as to how much of the said property is given to each of the defendants and the location thereof which certainty as to measurement.

A iii) The particulars of the beneficiaries to the trust at the time of creation of the trust.

iv) The plaintiff being a co-operative and governed by a written constitution, it can only establish as trust (if any by a board's
B resolution pursuant to r. 44(2)(q).

[69] On the third issue, the court is of the view that the main thrust of the defendants' argument here is almost similar to their stance with regard to the first and second issues which are
C inseparable. Any discussions on the third issue will inextricably involve discussing the second and the third issues.

[70] At the risk of repetition, the court will just state that the facts in the instant case are not in all fours with the facts of *Inwards & Others v. Baker (supra)*. Had there been an active
D encouragement by the plaintiff to the defendants and other occupants to remain on the said land and coupled with the encouragement to renovate their houses, the court would not hesitate to defend the equitable rights in the expectation of being allowed to remain there (see also *Sentul Murni Sdn Bhd v. Ahmad*
E *Amirudin Kamarudin & Ors* [2000] 4 CLJ 375).

[71] The representation purportedly made by the late Tun V.T. Sambanthan cannot confer any interest in the said land capable of registration under the National Land Code. There was no sale
F and purchase agreement either in writing or orally. There was no lease or tenancy on the registered document of title. There is no caveat by the defendants so as to protect the defendants' alleged interest.

G **[72]** The defendants and the other occupants had occupied the said land for some 53 years without any payment or promise to pay any rental or any other terms of payment whatsoever to the plaintiff. In *Immetec Sdn Bhd (supra)* the court equated an occupant of a land whose licence to occupy has been validly
H terminated as a trespasser or squatter. In the *Cahaya Ideal (supra)* the court held that squatters have no right in law or equity to remain on the said land and they can be ousted at will.

[73] Assuming that the defendants and the other occupants could convince the court that it was the intention of the predecessor in
I title that they could remain on the said land for as long as they like, thus creating a tenancy in perpetuity, is it allowable under the

National Land Code. The court is of the view that the facts of the instant case does not show that there was ever a tenancy created between the plaintiff and the defendants and the other occupants. If there was a tenancy created then in law under s. 221(3) of the National Land Code the tenancy could not be longer than 30 years.

[74] In the instant case, the defendants and the other occupants have been on the said land for about 53 years and without any payment of rental (see *Hajara Singh v. Muthu Karuppan*).

[75] In the court's view, it would be unfair to the plaintiff to be denied their ownership right and accordingly under the circumstances ruled that the plaintiff has the right to evict the Defendants and the other occupants from the said land.

Conclusion

[76] Based on the reasons as adumbrated above, and in all the circumstances the court allowed the plaintiff's claim as prayed in the statement of claim with costs and find that the defendants have failed to prove their case against the plaintiff and therefore dismissed the counterclaim with costs.